

Colonial Manor 1977, Inc. d/b/a Wedgewood Health Care and 1115 Nursing Home and Hospital Employees, a Florida Division of 1115 Joint Board, Petitioner. Case 12-RC-6283

26 August 1983

### DECISION ON REVIEW AND ORDER

On 14 December 1982 the Regional Director for Region 12 issued a Decision and Direction of Election in the above-entitled proceeding, in which he found appropriate the unit sought by the Petitioner, consisting of the approximately 21 licensed practical nurses (LPNs) employed at the Employer's St. Petersburg, Florida, facility. The Regional Director rejected the Employer's contention that the LPNs should be excluded as supervisors under Section 2(11) of the Act. He also found that the Employer's three shift supervisors were statutory supervisors who should be excluded. He further found that the Employer's registered nurses (RNs) were professionals who should be excluded, since the Petitioner does not seek to include them and since the LPNs separately constitute an appropriate unit. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review and motion to stay the election, on the grounds that the Regional Director made erroneous findings of fact and departed from officially reported precedent.

By telegraphic order dated 17 January 1983 the request for review and the motion to stay the election were granted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case with respect to the issue under review and makes the following findings:

The Employer is engaged in the operation of a proprietary nursing home in St. Petersburg, Florida. Its facility is a two-story building with approximately 270 beds, 2 nursing stations on the first floor, and 4 nursing stations and the nursing office on the second floor. The Employer's nursing department operates on three shifts. The 7 a.m.-3 p.m. shift is headed by the director of nursing and an RN shift supervisor, and the 3 p.m.-11 p.m. shift and the 11 p.m.-7 a.m. shift are headed by an LPN shift supervisor. All of the approximately 21 LPNs in the unit which the Regional Director found appropriate are called "charge nurses," and they are assigned to nursing stations on each shift. There is one LPN assigned to each of the six nursing stations on the first and second shifts, and one LPN

assigned to every two stations on the third shift. On the first, second, and third shifts there are approximately 21, 14, and 11 aides and orderlies, respectively.

LPNs, *inter alia*, prepare and administer medication, chart patient treatment, prepare dressings, serve meals to patients, and make room and patient care assignments to aides and orderlies. They do not possess the authority to hire or fire employees, but they do issue written warnings to aides and orderlies.<sup>1</sup> The record establishes that LPNs issue and sign these warnings independently and that the warnings become part of an employee's permanent personnel file. Although the director of nursing also signs the warnings,<sup>2</sup> she generally does not conduct an investigation unless a serious matter like patient abuse is involved or unless the affected employee requests an investigation. The LPNs' independent authority is illustrated by the testimony of the director of nursing, who stated that on one occasion she told an aide who protested a warning that the LPN was in charge and that the aide should follow the LPN's instructions even if she disagreed with them.

As a substantive matter, the warnings issued by LPNs frequently involve enforcement of the Employer's personnel policies.<sup>3</sup> The Employer's personnel manual provides that warning notices will be issued for infractions of rules of conduct, that an employee will be considered for dismissal if his conduct and language reflects a poor image of the Employer, and that an employee's failure to call in when absent will be recorded in his personnel file. The documentary evidence indicates that LPNs have enforced these rules by issuing warnings for, *inter alia*, cursing, addressing an LPN in a disrespectful manner, sleeping on the job, and being absent from work without calling in.<sup>4</sup>

<sup>1</sup> The documentary evidence indicates that written warnings have been issued by the director of nursing, the assistant director of nursing, the shift supervisors, and the LPNs.

<sup>2</sup> The Employer has used two different written warning forms. Until 1981, a warning was signed only by the person issuing it, but since that time the Employer has used forms which are signed by the person issuing it, by the director of nursing, and sometimes by a shift supervisor. The new forms also contain space for remarks by the person issuing the warning, by the employee, and by the director of nursing or shift supervisor.

<sup>3</sup> See, generally, *Beverly Manor Convalescent Centers*, 264 NLRB 966, 967 (1982).

<sup>4</sup> The LPNs' authority to issue written warnings for personnel matters distinguishes this case from *Eventide South*, 239 NLRB 287, 288 (1978), and *St. Mary's Hospital*, 220 NLRB 496, 497 (1975), where the Board found that the employees in question were not supervisors. In *Eventide South*, the Board found that the charge nurses' role in the employer's disciplinary procedure was to observe and report to higher authority any inadequacies in an employee's work performance. The Board concluded that the charge nurses' authority did not extend beyond the realm of patient care to personnel matters such as absenteeism. In *St. Mary's*, the Board observed that the nurses could verbally reprimand employees for improper patient care, but could not discipline them for personnel matters such as absenteeism.

In the circumstances of this case, we also find that written warnings are not merely a minor form of discipline. We note that in one incident an LPN issued a warning which admonished an aide for disrespectful conduct and which contained a separate notation by the director of nursing indicating that the next warning would result in suspension.<sup>5</sup> The director of nursing made the separate notation without investigating the incident. Two other warnings issued by LPNs for sleeping on the job contained separate notations by shift supervisors indicating that the next warning would result in termination. The LPNs issued the warnings on their own, and there is no evidence that an investigation was conducted.<sup>6</sup>

The record also discloses an incident in which an LPN effectively recommended the discharge of an employee. On this occasion the employee and the LPN spoke with the director of nursing, who acted as a "mediator" in the dispute. The LPN accused the aide of abusing a patient, and the aide admitted that she had done so. The director of nursing asked the LPN what should be done, the LPN recommended discharge, and the aide was allowed to resign on that same day.

We also find that LPNs have the authority and the responsibility to evaluate aides and orderlies. The Employer's personnel manual provides that an employee will be evaluated "by his supervisor" after his first 30 days of employment, and that evaluations will be conducted every 6 months thereafter, with occasional interim evaluations.<sup>7</sup> The evaluations are signed by the LPNs and are placed in the employees' permanent personnel files. The director of nursing also signs the evaluations, but her signature only indicates that she has seen them and not necessarily that she agrees. Furthermore, the director of nursing does not conduct an investigation of a bad evaluation unless it involves a serious problem such as patient abuse.<sup>8</sup>

As a substantive matter, evaluations prepared by LPNs measure, *inter alia*, employees' compliance with some of the Employer's major personnel poli-

cies. Thus, employees are given ratings on personal appearance, attendance and punctuality, and conduct while on duty.<sup>9</sup> As noted above, the Employer's personnel manual sets forth policy statements on each of these areas, and it also expressly provides that the supervisor's evaluation will note the failure to give advance notice of an absence. We also note that an additional category on the evaluation rates employees on "loyalty to employer."

The director of nursing testified that an employee could be put on probation as a result of a bad evaluation. In one instance, an LPN decided on her own to perform an interim evaluation on an employee, and in the evaluation she criticized the employee's attitude and noted a problem with tardiness. The LPN testified that she, the director of nursing, and the employee discussed the evaluation and agreed that a probationary period was appropriate.<sup>10</sup> In a subsequent evaluation, the LPN wrote that the employee's attitude had improved and that the "probation period is hereby over." The director of nursing testified without contradiction that the LPN ended the probationary period on her own.

Moreover, we also note that the job descriptions of LPNs stress "qualities of leadership" and indicate that LPNs are to supervise their staffs, giving warning notices where appropriate.<sup>11</sup> Nurses aides are informed in their job description that they are to perform specified duties "under the supervision" of a charge nurse. Aides and orderlies are also notified by the personnel manual that charge nurses form part of the "line of command," and, as noted above, the director of nursing told an aide that the LPN was in charge and that the aide should follow the LPN's instructions even if she disagreed with them.

In view of the foregoing and the record as a whole, we find that the LPNs exercise authority in

<sup>5</sup> See *Northwoods Manor*, 260 NLRB 854, 855 (1982).

<sup>6</sup> Because written warnings constitute a separate form of discipline issued independently by LPNs, this case is distinguishable from those in which employees merely report incidents to higher authorities for subsequent investigation and discipline. Compare with, e.g., *Pine Manor Nursing Home*, 238 NLRB 1654, 1655 (1978); *North Miami Convalescent Home*, 224 NLRB 1271, 1274 (1976).

<sup>7</sup> The LPNs receive the evaluation forms from the assistant director of nursing or the shift supervisors. Occasionally an LPN will be told to address a specific problem or will receive a form already containing some comments.

<sup>8</sup> The director of nursing's reliance on the LPNs' evaluations distinguishes this case from *Newton-Wellesley Hospital*, 219 NLRB 699, 701 (1975), where the Board found that head nurses were not supervisors. There the Board noted that the employer did not rely solely on the evaluations made by head nurses, but instead sought "information from a variety of personnel."

<sup>9</sup> The LPNs' authority to evaluate employees' compliance with personnel policies distinguishes this case from *Greenpark Care Center*, 231 NLRB 753, 754 (1977). In finding that the LPNs in that case were not supervisors, the Board noted that the evaluations prepared by the LPNs rated the performance of aides and orderlies on such patient care tasks as bathing a patient or taking pulse and temperature. Moreover, in that case, unlike here, the registered nurses performed additional evaluations on aides and orderlies, and the evidence did not establish that the LPNs performed the evaluations on a regular basis.

<sup>10</sup> Although there is a dispute as to whether the LPN or the director of nursing first suggested probation, it is clear that they reached an agreement that the employee should be placed on probation.

<sup>11</sup> The Board frequently has refused to give weight to job descriptions which merely confer a supervisory title, where the evidence does not reflect that supervisory authority is actually exercised. See, e.g., *Eventide South*, *supra* at 287, fn. 3. However, the Board has noted the relevance of job descriptions where, for example, there is other evidence that supervisory authority is actually exercised and where the supervised employees are also informed, either by their own job descriptions or verbally by management, that they are to be supervised by the individuals in question. See, e.g., *Northwoods Manor*, *supra* at 855. See also *Avon Convalescent Center*, 200 NLRB 702, 706 (1972).

the interest of the Employer which requires the use of independent judgment. In making this finding, we emphasize that their authority extends to the enforcement of the Employer's major personnel policies and is not merely an outgrowth of their training or primarily incidental to patient care.<sup>12</sup> We therefore find that all of the Employer's LPNs are supervisors within the meaning of Section 2(11)

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<sup>12</sup> Compare with *Beverly Manor Convalescent Centers, supra*.

of the Act, and that the unit which the Petitioner seeks is inappropriate.<sup>13</sup> Accordingly, we shall dismiss the petition.

#### ORDER

It is hereby ordered that the petition filed herein be, and it hereby is, dismissed.

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<sup>13</sup> *Northwoods Manor, supra*. See also *Wright Memorial Hospital*, 255 NLRB 1319 (1980).